

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

EDWARD BOWERS,

Plaintiff,

v.

20-CV-1206V(Sr)

SAMUAL DEPASQUALE

and

JAMES YANSICK,

Defendants

DECISION AND ORDER

This case was referred to the undersigned by the Hon. Lawrence J. Vilardo, pursuant to 28 U.S.C. § 636(b)(1), for all pretrial matters. Dkt. #18

Currently before the Court is a motion by Brian Chapin York, Esq., to withdrawal as counsel for plaintiff, Edward Bowers, and to file his affirmation in support of such motion under seal. Dkt. #27. Counsel filed a redacted affirmation in support of such motion on CM/ECF and submitted an affidavit of personal service of the motion to withdrawal upon plaintiff. Dkt. #27-2.

Rule 83.2(c)(4) of the Western District of New York Rules of Civil

Procedure provides:

[A]n attorney who seeks to withdraw . . . shall file a motion, which must be served upon the client and all other counsel

of record. If privileged or otherwise confidential information is reasonably necessary to support such application, such information may be submitted *in camera* to the Court, with a copy to the client only.

The decision to grant or deny a motion to withdraw as counsel is committed to the discretion of the district court. *Whiting v. Lacara*, 187 F.3d 317, 320 -321 (2d Cir. 1999). “When a court denies an attorney leave to withdraw it is usually because the client’s rights will be prejudiced by the delay necessitated in obtaining replacement counsel or because the court’s trial calendar will be adversely affected.” *Welch v. Niagara Falls Gazette*, 2000 WL 1737947, *3 (W.D.N.Y. Nov. 17, 2000). *Whiting*, 187 F.3d at 320.

Inasmuch as this case remains in the initial stages of discovery, and upon review of the affidavit of Bran Chapin York, Esq., I find good cause to permit the withdrawal of Mr. York as counsel for plaintiff, Edward Bowers.

Accordingly, it is hereby **ORDERED** that:

(1) the Clerk of the Court shall file the affidavit in support of the motion to withdraw under seal;

(2) the motion of Brian Chapin York, Esq., seeking to withdraw as counsel for plaintiff (Dkt. #27), is granted;

(3) the Clerk of the Court shall serve a copy of this Order upon plaintiff, Edward Bowers, *via* United States mail at 22 East Mosher St., Falconer, NY 14733; and

(4) Plaintiff, Edward Bowers, shall retain new counsel, who shall file a notice of appearance, or advise the Court that he is proceeding without counsel, no later than **January 28, 2022**.

Plaintiff is forewarned that his failure to comply with this Order may result in dismissal of this action for failure to prosecute pursuant to Rule 41(b) of the Federal Rules of Civil Procedure.

SO ORDERED.

DATED: Buffalo, New York
December 16, 2021

s/ H. Kenneth Schroeder, Jr.
H. KENNETH SCHROEDER, JR.
United States Magistrate Judge